

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANA SAVAGE, WAYNE L.	§
SAVAGE, and BELINDA SAVAGE,	§
	§ No. 764, 2010
Defendants Below-	§
Appellants,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
U.S. NATIONAL BANK	§ in and for New Castle County
ASSOCIATION, as trustee for SG	§ C.A. No. 07L-05-003
MORTGAGE SECURITIES ASSET	§
BACKED CERTIFICATES, SERIES	§
2006-FRE2; assignee of	§
MORTGAGE ELECTRONIC	§
REGISTRATION SYSTEMS, INC.,	§
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 18, 2011

Decided: May 12, 2011

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

**ORDER**

This 12<sup>th</sup> day of May 2011, upon consideration of the appellants' opening brief, the appellee's motion to affirm, and the record below, it appears to the Court that:

(1) The appellants, Dana Savage, Wayne Savage, and Belinda Savage ("the Savages"), filed this appeal from an order of the Superior Court, docketed November 16, 2010, granting a default judgment to the appellee, U.S. National

Bank Association (“USNB”), on its complaint seeking a writ of scire facias sur mortgage. USNB has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face of the Savages’ opening brief that their appeal is without merit. We agree and affirm.

(2) The record reflects that, on March 28, 2006, the Savages executed and delivered a mortgage to Mortgage Electronic Registration Systems, Inc. (“MERS”), as nominee for Fremont Investment and Loan (“the Lender”). The mortgage document granted MERS a first priority lien secured by residential real property. On September 1, 2006, the Lender transferred servicing of the mortgage to America’s Servicing Company. On February 9, 2007, MERS assigned the mortgage to USNB.

(3) The Savages later defaulted on the promissory note secured by the mortgage. USNB filed a lawsuit on May 1, 2007 to foreclose on the property. USNB’s complaint specifically required the Savages to respond to the complaint with an affidavit of defense pursuant to 10 Del. C. § 3901(a).<sup>1</sup> On June 4, 2007, the Savages filed a single page answer to USNB’s complaint, which simply denied three paragraphs of the complaint and admitted one paragraph of the complaint. In effect, the Savages denied executing a mortgage to MERS, denied that MERS has assigned its interest in the mortgage to USNB, denied defaulting on payments

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<sup>1</sup> Section 3901(a) provides, among other things, that the plaintiff in a mortgage foreclosure action may require the defendant to “answer any or all allegations of the complaint by an affidavit setting forth the specific nature and character of any defense and the factual basis therefor....”

owed to USNB, and admitted that USNB had attached a copy of the disclosure required under the Fair Debt Collection Practices Act to its complaint. The Savages did not respond to the complaint by affidavit nor did they set forth a specific defense to the complaint with supporting facts.

(4) On June 11, 2007, the Savages requested verification of the debt owed under the promissory note secured by the mortgage. This request stayed further proceedings in the matter until USNB provided verification of the debt on August 4, 2010. On August 27, 2010, USNB filed a motion for default judgment pursuant to 10 Del. C. § 3901(d), alleging that the Savages had failed to respond to the complaint specifically with an affidavit of defense and thus were deemed legally to have admitted the allegations of the complaint and were subject to a default judgment.<sup>2</sup> The Savages filed a response in opposition to the motion, claiming never to have received the verification of the debt and claiming never to have received notice of the transfer of the mortgage to USNB.

(5) The Superior Court held a hearing on the motion for default judgment on September 20, 2010. After taking testimony, the Superior Court continued the hearing and directed USNB to provide a legal memorandum addressing two issues:

(i) What effect did the failure or delay in giving notice to the Savages of the

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<sup>2</sup> See 10 DEL. CODE ANN. tit. 10, § 3901(d) (1999), which provides that, if the plaintiff requires in its complaint that the defendant respond with an affidavit of defense and the defendant fails to so respond, “the designated allegations will be deemed admitted, and default judgment may be entered thereon, in the discretion of the Court and upon motion by the plaintiff.”

assignment of the mortgage to USNB have on the validity of the foreclosure action? and (ii) What effect did the delay in providing the Savages with verification of the debt have on the validity of the foreclosure action?

(6) In its responsive memorandum, USNB argued that the failure to give notice of the assignment of the mortgage was not a valid defense to the foreclosure action and, thus, had no effect on its validity.<sup>3</sup> Moreover, USNB argued that the 2009 statutory changes to the Truth in Lending Act,<sup>4</sup> which require notice of an assignment of a mortgage to be given within 30 days, did not apply in the Savages' case because the assignment was recorded in February 2007, well before the statutory changes were adopted. USNB argued that it had complied with existing law when it notified the Savages at the time of settlement that the related mortgage loan may be assigned, sold or transferred.<sup>5</sup> Finally, USNB argued that the Fair Debt Collection Practices Act<sup>6</sup> did not impose a time limit on when a collector had to respond to a debtor's request for debt verification. The Savages filed a two-sentence response to USNB's memorandum, which did not raise any legal counter-argument to USNB's position.

(7) On October 18, 2010, USNB re-noticed its motion for default judgment. After a hearing, the Superior Court concluded that the Savages had

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<sup>3</sup> *Gordy v. Preform Building Components, Inc.*, 310 A.2d 893, 895-96 (Del. Super. 1973) (setting forth recognized defenses to a mortgage foreclosure action, which does not include failure to give notice of an assignment of the mortgage).

<sup>4</sup> 15 U.S.C. § 1641(g) (2009).

<sup>5</sup> 12 U.S.C. § 2605(c) (1974).

<sup>6</sup> 15 U.S.C. § 1692(g) (2006).

presented no valid defense to the action and granted USNB's motion for default judgment. This appeal followed. The gist of the Savages' pro se opening brief on appeal is that they were never properly notified of the assignment of the mortgage by MERS to USNB. The Savages cite no legal authority, however, to support their suggestion that this is a valid defense to this mortgage foreclosure action initiated in 2007. Indeed, it is not a valid legal defense to this foreclosure action.<sup>7</sup> We find no error in the Superior Court's conclusion that USNB had complied with all of the relevant legal provisions regarding the foreclosure action and was entitled to default judgment because the Savages had failed to respond to the complaint with an affidavit of defense.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>7</sup> See *Gordy v. Preform Building Components, Inc.*, 310 A.2d at 895-96.